

EXCEPTION

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BEFORE THE ARIZONA CORPORATION COMMISSION

JIM IRVIN,
Chairman
TONY WEST,
Commissioner
CARL J. KUNASEK,
Commissioner

IN THE MATTER OF U S WEST
COMMUNICATIONS, INC.'S STATEMENT
OF GENERALLY AVAILABLE TERMS
AND CONDITIONS.

DOCKET NO. T-01051B-99-0068

**U S WEST'S EXCEPTIONS TO
RECOMMENDED ORDER IN THIS
DOCKET**

U S WEST files the following exceptions to the recommendation of Hearing Officer Barbara M. Behun pursuant to A.A.C. R14-3-100(B). In particular, U S WEST objects to the recommendations that (1) the Hearing Division be directed to issue a procedural schedule in furtherance of the review of the SGAT and (2) that the new rates contained in the SGAT be reviewed with respect to their compliance with Section 252(d) of the Act.

INTRODUCTION

On February 5, 1999, U S WEST submitted its Statement of Generally Available Terms and Conditions ("SGAT") to provide competitive local exchange carriers ("CLECs") in Arizona with an additional option for obtaining interconnection, unbundled network elements, ancillary services, and resale from U S WEST. The Telecommunications Act of 1996 allows a State commission 60 days in which to complete its review of the SGAT or permit the SGAT to take effect. It also provides the Commission with authority to continue to review an SGAT that has been permitted to take effect.

The proposed recommendation of Hearing Officer Behun allows the SGAT to take effect, subject to certain conditions. In particular, the Order modifies the SGAT to the extent necessary to comply with the Act, applicable federal and state rules and regulations, appellate decision in

1 effect at present and throughout the contract period, applicable prior and future Commission
2 decisions, and the United States Supreme Court's decision in *AT&T v. Iowa Utilities Bd.*, No. 97-
3 826, Slip Op. (U.S. Jan. 25 1999). U S WEST does not object at this time to those modifications.
4 In its Findings of Fact, however, the recommended Order requires that the Hearing Division
5 issue a procedural schedule in furtherance of the review of the SGAT, implying a full-blown
6 hearing. In addition, the Order requires a future determination of whether the new rates
7 contained in the SGAT comply with Section 252(d) of the Act. U S WEST excepts to the
8 inclusion of these provisions in the Commission's final Order.

9 **ARGUMENT**

10 **A CONTESTED HEARING REGARDING THE SGAT IS UNFOUNDED**

11 This Commission should not direct the Hearing Division to issue a procedural schedule in
12 furtherance of the review of the SGAT to the extent that it authorizes the Hearing Division to
13 implement a separate hearing regarding the SGAT. Such a procedure, which presumably would
14 include discovery, testimony and a prolonged hearing, would needlessly expend Commission
15 resources and serve only to divert attention from issues which affect the citizens of Arizona.

16 U S WEST has filed its SGAT to provide competitive local exchange carriers ("CLECs")
17 in Arizona with an additional option for obtaining interconnection, unbundled network elements,
18 ancillary services, and resale from U S WEST. To the extent any CLEC does not wish to use the
19 SGAT, it is free to negotiate a separate agreement with U S WEST, opt into another carrier's
20 agreement, or provide service under U S WEST's applicable Arizona tariffs. Indeed, Section
21 252(f)(5) states that submission of an SGAT does not relieve a Bell operating company ("BOC")
22 of its duty to negotiate in good faith, and U S WEST fully intends to honor that duty with any
23 CLEC that wishes to negotiate an agreement.

24 Importantly, the SGAT is purely another option available to the CLECs so that they may
25 establish an agreement with U S WEST to enable them to serve local exchange customers in
26 Arizona. AT&T/TCG filed with the Hearing Division an extensive list of meritless complaints

1 regarding U S WEST's SGAT, seeking Commission rejection of or a separate hearing about the
2 SGAT. Indeed, AT&T/TCG already have their own interconnection agreements and therefore
3 their only interest in such a hearing is to exhaust Commission and U S WEST resources and to
4 delay U S WEST's 271 application. By directing the Hearing Division to issue a procedural
5 schedule in furtherance of the review of the SGAT, this Commission would be providing license
6 to AT&T/TCG to engage in a protracted hearing that will not result in any useful purpose.

7 Instead, this Commission should allow the SGAT to take effect without further hearings
8 dedicated solely to the SGAT. Rather, a CLEC which may wish to opt into the SGAT, but which
9 takes issue with a particular provision, may adopt the remainder of the SGAT and negotiate and
10 arbitrate that particular issue. At that time, the issue will be negotiated and arbitrated between
11 parties who have a particular stake in the matter. Additionally, the Commission's resources will
12 be devoted to an issue that must be resolved between parties whose sole interest is servicing
13 Arizona consumers.

14 Moreover, the additional modifications to the SGAT, including the applicability of past
15 and future Commission decisions and the "pick and choose" provision, will sufficiently address
16 the needs of Arizona consumers. Based on those modifications, there is no need for additional
17 proceedings in this matter.

18 **THE NEW RATES ARE NOT SUBJECT TO SECTION 252(d) REVIEW**

19 U S WEST has included in its SGAT prices for switching and shared transport that are
20 not TELRIC-based. It has done so based on the Supreme Court's recent decision vacating the
21 FCC's list of unbundled network elements, to which Section 252(d) applies. To the extent that
22 the recommended order requires an analysis of whether the pricing of vacated UNEs contained in
23 the SGAT are cost-based, U S WEST takes exception to that portion of the Order.

24 In AT&T Corp. v. Iowa Utils. Bd., No. 97-826, slip op. (U.S. Jan. 25, 1999), the
25 Supreme Court struck down the FCC rule 47 C.F.R. § 51.319 that established which network
26 elements an incumbent local exchange carrier ("ILEC") must unbundle under Section 251(c)(3).

1 The Supreme Court held that the FCC failed to give any meaning to the "necessary" and "impair"
2 standards in 47 U.S.C. § 251(d)(2) and, instead, improperly gave competitive local exchange
3 carriers "blanket access" to ILEC networks. AT&T Corp., slip op. at 20.

4 Under Sections 251(c)(3), 251(d)(2), and 252(d)(1), however, U S WEST's obligation to
5 provide elements at cost-based rates applies only to elements it must unbundle pursuant to
6 Sections 251(c)(3) and 251(d)(2); it does not apply to any facility or component that meets the
7 definition of a "network element" in 47 U.S.C. § 153(29), the provision defining what constitutes
8 a network element. See 47 U.S.C. § 251(d)(2) (FCC must apply "necessary" and "impair"
9 standards to determine "what network elements must be made available for purposes of
10 subsection (c)(3) of [Section 251]"); 252(d)(1) (state commissions must establish cost-based rates
11 "for purposes of subsection (c)(3) of [Section 251]").

12 As set forth above, the Supreme Court vacated the FCC's list of elements ILECs must
13 unbundle under Section 251(c)(3) because the FCC failed to give any meaning to the unbundling
14 standards in Section 251(d)(2) of the Act. Thus, to the extent any network element at issue is not
15 subject to unbundling under Section 251(c)(3), U S WEST is not required to charge cost-based
16 rates under Section 252(d)(1). Instead, U S WEST has pricing flexibility if it chooses to provide
17 that element to new entrants. U S WEST has exercised that flexibility in the SGAT solely for the
18 pricing of the shared transport and switching.

19 To the extent the SGAT contains prices that must be TELRIC-based but were not
20 contained in the permanent cost docket, U S WEST does not object to providing cost studies for
21 the Commission's review.


22 CONCLUSION

23 For the foregoing reasons, there is no need for the Commission to waste its time and
24 resources holding a hearing on the SGAT. Such a hearing will only serve to delay U S WEST's
25 271 application and divert scarce Commission resources from the rate case. Additionally, the
26

1 Commission should not require that U S WEST submit its rates for shared transport and
2 switching to comply with Section 252(d).

3 RESPECTFULLY SUBMITTED this 29th day of March, 1999.

4 U S WEST COMMUNICATIONS, INC.

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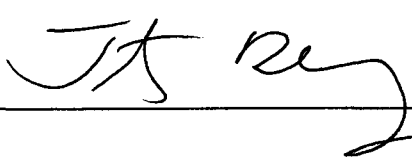
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